

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

BRUCE EDWARD FERRIEL

PLAINTIFF

v.

Civil No. 06-5061

SHERIFF KEITH FERGUSON;
LT. PAUL CARTER; CAPTAIN
HUNTER PETRAY; DR. NEIL
MULLINS; NURSE SUE McDONALD;
and CORPORAL POWELL

DEFENDANTS

ORDER

Defendants have filed a motion for summary judgment (Doc. 24). To assist plaintiff in responding to the summary judgment motion, the undersigned is propounding a questionnaire. The court will consider plaintiff's response to the questionnaire in issuing a report and recommendation on the summary judgment motion.

For this reason, Bruce Edward Ferriel is hereby directed to complete, sign, and return the attached response to defendants' summary judgment motion on or before **July 26, 2007**. **Plaintiff's failure to respond within the required period of time may subject this matter to dismissal for failure to comply with a court order.**

IT IS SO ORDERED this 29th day of June 2007.

/s/ *J. Marschewski*

HON. JAMES R. MARSCHEWSKI
UNITED STATES MAGISTRATE JUDGE

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DEFENDANTS

RESPONSE TO SUMMARY JUDGMENT MOTION

TO: BRUCE EDWARD FERRIEL

These questions and answers will serve as your response to the motion for summary judgment filed by the defendants. You may use additional sheets of paper in responding to these questions. You must file this response by **July 26, 2007**.

1. On October 26, 2005, your suspended sentence was revoked on original charges of possession of a controlled substance, possession of drug paraphernalia, and resisting arrest.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to the Defendants' Exhibit 1 at page 1.

2. On November 8, 2005, a bench warrant was issued for your arrest.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 1 at page

2.

3. You were arrested and booked into the Benton County Detention Center (BCDC) on December 24, 2005.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 1 at page

3.

4. When you were booked into the BCDC, you were provided with a copy of the detainee rules which you signed.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 1 at page

4.

5. On December 24, 2005, you completed and signed a medical intake questionnaire indicating you had no health problems at the time of booking.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 1.

6. According to the facts constituting probable cause for arrest, when you were arrested on December 24, 2005, you were combative with officers and after being placed in a patrol car continued to cry and bang your head against the window.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 1 at pages 9-10.

7. On December 25, 2005, shortly after midnight Deputy Joshua Culotta heard shouting coming from cell #2 in booking. Culotta looked up and observed Deputy Ron Powell struggling with you.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 1.

8. Culotta went to cell #2 and Powell had already placed you on the floor and had your hand behind your back.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 1.

9. Culotta placed his handcuff on your left wrist and Powell placed the handcuff on your right wrist.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page

1.

10. You were escorted into booking cell #3 so that you would not attempt to hurt any of the other inmates in detox.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page

1.

11. Powell attempted to close the door of cell #3 and you put your foot in the door to prevent the door from closing.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page

1.

12. Your foot was removed from the door, and Powell closed the door.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page

1.

13. Culotta walked away from the cell door and you began repeatedly kicking the cell door.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page

1.

14. Sergeant Andrew Adams instructed Culotta to five point restrain you so that you would not injure yourself.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page

1.

15. Culotta was handed a pair of shackles and another pair of handcuffs.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page

1.

16. Culotta and Powell went to the cell door.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page

1.

17. Culotta instructed you to back away from the cell door and sit on the cell bench.

You responded: "F— You."

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page
1.

18. Culotta told you that if you did not sit on the bench he would spray you with

Oleoresin Capsicum (OC) spray.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page
1.

19. The cell door opened and you continued to stand in the doorway.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page

1.

20. Culotta pulled his OC spray from his belt holder and told you to sit down immediately or you would be sprayed.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page

1.

21. You began breathing heavily and appeared to be sweating like you were having an adrenaline rush. You refused to sit down and continued to yell at Culotta and Powell.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page

1.

22. Culotta administered a one second burst of OC spray to your face. You continued to stand in the doorway.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 1.

23. Culotta and Powell entered the cell and instructed you to go to the floor. You stood there and did not move.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 1.

24. Culotta and Powell grabbed you and placed you on the floor.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page

1.

25. You tensed your legs and would not allow Culotta to gain control of them.

Culotta gained control of your legs and locked them across the ankles so that you could not kick out of the hold and injure yourself or Powell.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page

1.

26. Once you were under control, Powell removed the handcuffs and stood you on your feet and allowed you to decontaminate your face.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page

1.

27. After you decontaminated your face, the handcuffs were put back on in front and the shackles were placed on your feet. Another pair of handcuffs were placed on both chains of your restraints so that you could not stand up and kick the door. The handcuffs were double locked.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 1.

28. Powell and Culotta then left the cell.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 1.

29. Five minutes later, Culotta heard a banging noise coming from your cell door.

Culotta informed Sgt. Adams that you were kicking the door again.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 1.

30. Powell asked Culotta to open the cell door. Culotta unlocked the door and observed your head push the door open indicating you were hitting the door very hard with your head making the banging noise.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at pages 1-2.

31. Powell instructed a trustee to get an anti-suicide smock due to your display of suicidal behavior.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page

2.

32. Your shackles were removed and you were taken to the booking restroom to be dressed out.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 2.

33. When you were instructed to remove your clothing you became passively resistant and refused to move.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 2.

34. Sgt. Adams arrived and began talking to you. You stated you were having a seizure and needed to see medical staff.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 2.

35. Culotta noted that while you were claiming to be having a seizure you were screaming profanities at the jailers and resisting their commands.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 2.

36. Sgt. Adams asked if you had been hitting your head on the cell door. Culotta stated that you had.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 2.

37. Sgt. Adams instructed the jailers to continue dressing you in the anti-suicide smock.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 2.

38. You shouted: "F— you all, I had surgery on my knee 9 times! I'll call Doug Norwood on you're a—!"

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 2.

39. Culotta instructed you to remove your shirt. You remained passively resistant.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 2.

40. Culotta told you that if you did not remove your clothing that they would remove it for you.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 2.

41. You continued to shout obscenities and refused to remove your shirt.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page

2.

42. The deputies removed your clothing and placed you in the anti-suicide smock.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page

2.

43. You were then taken back to cell #3.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page

2.

44. You were instructed to get on the floor so the restraints could be replaced. You

were handcuffed in front.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 2.

45. Powell was locking the shackles on you when you lifted the smock and grabbed your genitalia. You began shaking it with your hands and shouting towards Culotta: "I'll f--- your Mom. Had her a--- last week. I got cancer b---- and I'm going to f--- you're a- in prison."

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 2.

46. Culotta replaced the handcuffs on the restraint chains and made sure all restraints were double locked. You were instructed to remain on the floor until they exited the cell.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 2.

47. You continued to move and shout at Culotta.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 2.

48. Before you were able to get up, Culotta and Powell exited the cell and closed the door.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 2.

49. On December 27, 2005, you submitted a request stating that you needed to find out how your mother-in-law was doing. You noted she had been taken to the hospital and had stopped breathing that day. In response, you were told to contact your family for that information.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 1.

50. On January 1, 2006, you asked for a copy of the affidavit of probable cause for your arrest. A copy was provided to you by Sgt. Wiens.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 2.

51. On January 30, 2006, Deputy G. Baker was performing cell inspections and saw

your wrist band lying under your mat on your bunk.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 4.

52. Baker called you to your cell and asked why you did not have the band on. You said it didn't fit properly and would fall off in the shower. You also stated you had been told by a deputy on day shift that you would be given a new one but never got one.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 4.

53. Baker told you that you should try to wear it or at least keep it in your pocket and you replied you didn't feel like messing with it in the shower. Baker told you that you were going to be locked down for not wearing your wrist band.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 4.

54. When Baker escorted you to E-pod for lock-down, he noted that your wrist band fit properly and gave you not problems.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 4.

55. You were given a disciplinary for altering your ID or tampering with your ID and given thirty days lock down and loss of privileges.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 5.

56. However, you appealed and Lt. Carter modified the lock-down decision after hearing your side of the story.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 5.

57. On March 8, 2006, you requested the address for the Sherwood Municipal Court. The number was not in the phone book and you were advised to get the information from a friend or family member.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 4.

58(A). On March 24, 2006, you complained that you were having severe knee pains

and spitting blood due to bleeding ulcers. You stated you needed surgery for your right knee due to torn ligaments. You stated you had been sentenced to the Arkansas Department of Correction (ADC) and needed treatment right away. In response, you were told that the doctor made all medical decisions at the jail and if you were having medical problems to submit a medical request.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 5.

(B). Did you submit a medical request?

Answer: Yes _____ No _____.

If you answered yes, please state when you submitted the medical request and what response you received.

59. On March 27, 2006, you submitted a grievance. You stated you had medical problems including bleeding ulcers, severe knee problems, and back problems. You stated you needed knee surgery because of torn ligaments. You stated you needed medication. You stated you had been sentenced to the ADC. In response, you were told that the doctor makes all medical decisions in the jail.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 6.

60(A). You were seen by the nurse on April 11, 2006.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 2.

(B). What treatment did you receive?

Answer:

61(A). You were seen by the nurse on April 26, 2006.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 3.

(B). What treatment did you receive?

Answer:

62. On May 15, 2006, you requested a copy of your plea and it was provided to you.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 7.

63. On March 2, 2006, you were sentenced to a ten year term of imprisonment at the ADC.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit q at pages 12-16.

64. Please provide the date of your transfer from the BCDC to the ADC.

Answer:

65. Did you submit any requests for treatment for medical problems prior to March

24, 2006?

Answer: Yes _____ No _____.

If you answered yes, please state: (a) when you submitted the requests; (b) whether you were seen in response to the requests or what response you received; (c) if you were seen by Nurse McDonald or Dr. Mullins; and (d) what treatment you received.

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[illegible]

Answer: Yes _____ No _____.

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[illegible]

If you answered no, please describe in detail how you believe Dr. Mullins exhibited deliberate indifference to your serious medical needs.

68. Was Sheriff Ferguson personally involved in any of the events that are the subject of your lawsuit?

Answer: Yes _____ No _____.

If you answered yes, please explain what events he was involved in and how he violated your federal constitutional rights.

Answer:

Answer:

[illegible]

71. Do you contend Powell used excessive physical force against you during the early morning hours of December 25, 2005?

Answer: Yes _____ No _____.

If you answered yes, please describe in detail: (a) the physical force he used; (b) any injuries you suffered as a result of the use of force; (c) the medical treatment you sought, or received, as a result of the injuries; and (d) how long it took you to recover from the injuries.

Answer: Yes _____ No _____.

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have a copy.

If you answered no, please explain why you did not submit a grievance.

73. Your intake physical at the ADC was done on June 2, 2006.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit at pages 3-5.

74. It was noted you had suffered trauma to your right knee due to a fall from a roof in 1998. You reported having multiple surgeries. The following notations were made:

“Moderate crepitus + drawer sign noted. No ballotment, edema, or erythema noted.

Decreased full flexion. 20 decreased full flexion.”

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants’ Exhibit 5 at page 3.

75. It was determined you had post-traumatic arthritis of the right knee.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants’ Exhibit 5 at page 4.

76. On June 13, 2006, you were seen complaining of knee pain and prescribed over-the-counter Acetaminophen for three days.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 5 at page 10.

77. An x-ray of your right knee was taken on June 7, 2006, and showed a defect in the proximal tibia related to the prior hardware placement, an old ununified chip fracture of the inferior patella, and some calcifications about the patella and anterior joint space likely dystrophic in origin. The diagnostic impression was post surgical residuals and possible small loose bodies in the joint.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 5 at page 20.

78. Records from Baptist Memorial Medical Center indicate that you had reconstructive surgery on your right knee on August 7, 1998.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 6.

79. Since you have been at the ADC, have you had any treatment on your knee other than receiving an ace bandage and Acetaminophen?

Answer: Yes _____ No _____.

If you answered yes, describe: (a) the treatment you received; and (b) when you received the treatment. **Please refer the court to the page in the ADC medical records, Defendants' Exhibit 5, that discusses this medical treatment.**

80. Since you have been at the ADC, have you had any treatment for bleeding ulcers?

Answer: Yes _____ No _____.

If you answered yes, describe: (a) the treatment you received; and (b) when you received the treatment. **Please refer the court to the page in your ADC medical records, Defendants' Exhibit 5, that discusses this treatment.**

Detail below any further response you would like to make to the motion for summary judgment. If you have any exhibits you would like the court to consider, you may attach them to this response.

EXECUTED ON THIS _____ DAY OF _____ 2007.

AO72A
(Rev. 8/82)